



Voices of Women at the Chancery Bar – ROUTES FOR REAL CHANGE

This is a response to the December 2020 Report, “*Voices of Women at the Chancery Bar*” and the two webinars which the Chancery Bar Association organised in March and April 2021 to discuss the issues raised by that report.

The purpose of this response is to summarise the issues which were identified as tending to limit the development of successful careers by female members of the ChBA, as compared to male peers, and identify ways for Chambers (and others) potentially to address those issues, including examples of good practice which could be spread more widely. It has been prepared by the ChBA’s Equality and Diversity Subcommittee and is intended as a working document to guide further round table discussions, this time with Chambers decision-makers (both barristers and clerking/ management) which the ChBA will be organising shortly.

We are aiming for real changes in practice and ultimately to get much closer to equality for all at the Chancery Bar than is currently the case. Our focus is the Chancery Bar, but of course many of these issues are Bar-wide.

Nicola Rushton QC

Chair, ChBA Equality & Diversity subcommittee

Issue identified	Ways of addressing	What Chambers can do
<p>(1) Conscious and unconscious negative stereotypes and perceptions about female barristers:</p> <ul style="list-style-type: none"> • that they are worth less money • that they should focus on areas of practice which are less well paid • that they are not suitable for the higher profile or more important cases 	<ul style="list-style-type: none"> • Educate ourselves, men and women. Look at the figures and recognise the very large differences there are between male and female income, at the Chancery Bar (on average men in chancery practice earn almost 100% more than women, according to BMIF data) • Improve comparative analysis of figures available in chambers at least to senior clerks, EDOs 	<ul style="list-style-type: none"> • Active curation of individuals’ practices, to put the focus on the skills, character, goals and experience of the individual and so their suitability. Bar Council confirms this is permissible. • Formal structure of regular and data-driven practice reviews • Bias awareness training for clerks and others involved in

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<ul style="list-style-type: none"> • that they are better at detail oriented work • that they should concentrate on paperwork • that they are less able to “fight” a case 	<p>and HoCs, including real charge out rates and brief fees</p> <ul style="list-style-type: none"> • Be alert to and challenge these perceptions when expressed by clients or colleagues • Is there any way in which more Chambers could act together in concert on this? 	<p>career and business development</p> <ul style="list-style-type: none"> • Avoid making assumptions about what female juniors will want to specialise in, ask them more and encourage them to think more widely • Monitor work allocation, both allocated and unallocated work. Such monitoring could include collecting data on a regular basis on: <ul style="list-style-type: none"> (i) fee income earned on an anonymised basis by barristers in year of call bandings, for example years 1 to 5, 6 to 10 and so forth on a male/female basis; (ii) The quality and type of work being allocated; (iii) solicitors sending the work, with a view to ascertaining whether there are any problems of bias within particular firms; • There should be transparency of the data within chambers, at least, in relation to (i), (ii) and (iii) above. Identify if there are problems, which will then assist in targeting solutions • Avoid just sending out lists of possible counsel to solicitors. • Try and get conversations going with solicitors

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		<p>regarding diversity, particularly if certain solicitors have been identified as instructing mainly male barristers generally or on the better work or better paid work. For further discussion: is there scope for addressing this via more than one Chambers acting together/ through other Bar organisations?</p>
<p>(2) Under-pricing by female barristers and their clerks and/or giving unnecessary fee reductions</p>	<ul style="list-style-type: none"> • Education and training on pricing strategies, both traditional hourly rate based and also fixed fee 	<ul style="list-style-type: none"> • Implement training on effective pricing for barristers as well as clerks • Clearer policies on when fee reductions (before and after) will be given
<p>(3) Failure of senior MoCs (who are in reality mainly male) to “sponsor” and promote junior women in Chambers in the way they do junior men – or at least the junior men who “fit in”</p>	<ul style="list-style-type: none"> • Recognise and then try to address the tendency to sponsor those who are like ourselves • Actively encourage suitable male mentors and sponsors (ask the women if you are concerned about avoiding sexual harassment being a problem) • The Bar Council is producing a 3-year plan to develop better support for barristers in their first 7 years of practice, including active practice management. Recommend that the Junior Chancery Bar reviews and as necessary adapts any such guide for chancery practice • ChBA to produce models for good practice? 	<ul style="list-style-type: none"> • Create active sponsorship arrangements in Chambers which include all the juniors

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(4) Unfair selection of juniors by silks	<ul style="list-style-type: none"> • Disrupt patterns of the same silks always automatically bringing in the same juniors 	<ul style="list-style-type: none"> • Treat silks as “clients” when allocating junior briefs, i.e. silks go through the clerks and look at all the options • Focus on the skills required for a particular brief, to help identify all the people who could be suitable • Collate data on a regular basis to ensure that there is a fair allocation of silk work
(5) Unfair work allocation practices generally	<ul style="list-style-type: none"> • Find ways of monitoring all work, not just the “unallocated briefs” • Bar Council has created Toolkits for monitoring work allocation by reference to gender, race, disability. ChBA could look at modifying for chancery practice as necessary. • Bar Council is working on a Practice Management Guide to improve relationship between barristers and clerks • Publication and dissemination of data e.g. from BMIF • Further work is anticipated on producing toolkits by e.g. ChBA in association with the IBC, following on from the Leadership project 	<ul style="list-style-type: none"> • Identify sympathetic instructing firms who want to instruct a more diverse range of counsel and work with them to find ways of improving this • Monitor and actively review periodically to see if there is an improvement • Use the Bar Council’s Toolkits (and any other approved toolkits produced, e.g. with IBC)

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(6) Negative effects of sexual harassment and bullying and fear of the same	<ul style="list-style-type: none"> • Have this in mind as a factor when organising both formal and informal marketing/ networking events 	<ul style="list-style-type: none"> • Be clear as to who in Chambers is available for a confidential discussion of any concerns. There is no longer a duty on that person to report.
(7) Excessively male-oriented marketing practices which exclude female barristers (sometimes because their participation is perceived as less socially acceptable)	<ul style="list-style-type: none"> • Recognise that this is unfair, even if it is the way these events have always been done. • Ask various women in your organisation, for more insight into what is regarded as socially unacceptable • Actively think of alternatives • Do not object to women-only events: these may be a necessary part of rebalancing the currently un-level playing field, combating fears of sexual harassment, and will often be appreciated by female solicitors • Approaches to directories may be better effected by groups of chambers 	<ul style="list-style-type: none"> • Be more imaginative in devising marketing events and talk and listen to female MoCs in particular when doing so • Have transparency regarding all forms of marketing being done each week and by whom it is being done, e.g. a comprehensive weekly newsletter • Have training events to assist members on ways of personal marketing and give fair opportunities for women to be introduced to new solicitors • Have conversations with directories on representation of women, or lack of representation of women in chambers and inappropriate/ stereotyping use of language regarding any women

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(8) Unnecessary inflexibility around flexible working and childcare arrangements	<ul style="list-style-type: none"> Bar Council has established a Flexible Working Group, which will be developing models and recommendations which Chambers can adopt 	<ul style="list-style-type: none"> Ask the MoCs concerned – mainly female, but without making assumptions – what arrangements would help; use technology; recognise that different solutions work for different people. When someone comes back from maternity, consider whether on their return, they should for a limited period be the only person promoted for certain pieces of work
(9) Impact on confidence of female barristers of all of the above, ultimately leading to disproportionate numbers leaving the Bar	<ul style="list-style-type: none"> Good quality mentoring. Use the ChBA’s excellent existing mentoring scheme ChBA to organise “decompression” occasions – lunches, breakfasts to compare experiences 	<ul style="list-style-type: none"> Try to have good role models, and trumpet them Consider a “buddy” scheme for more junior members so that juniors feel that they can support each other, rather than creating an unhealthy competitive environment where they feel alone